

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

STACY WITHROW,)	Case No. 5:17-CV-1407
)	
Plaintiff,)	JUDGE DONALD C. NUGENT
)	
vs.)	MAGISTRATE JUDGE
)	KATHLEEN B. BURKE
COMMISSIONER OF SOCIAL)	
SECURITY ADMINISTRATION,)	<u>MEMORANDUM OPINION</u>
)	
Defendants.)	

This matter comes before the Court upon the Report and Recommendation of Magistrate Judge Kathleen B. Burke. (ECF #15). Plaintiff challenges the final decision of the Commissioner denying her applications for Disability Insurance Benefits (“DIB”) and Supplemental Security Income (“SSI”) under Titles II and XVI of the Social Security Act. 42 U.S.C. § 416(I). 423, 1381.

I. Procedural History

Plaintiff Stacey Withrow filed applications for DIB and SSI in April 2014, alleging a disability onset date of September 4, 2013. She alleged disability based on: bipolar disorder, migraines, lower lumbar stenosis, high cholesterol, high blood pressure, OCD, and depression. Her application was denied by the state agency (Tr. 98,99) and on reconsideration. (Tr. 115,116). Plaintiff requested and received an administrative hearing before Administrative Law Judge (“ALJ”) Jeffrey Raeber on April 6, 2016. The ALJ determined that Plaintiff is not disabled as there are jobs that exist in significant numbers in the national economy that she can perform. Tr. 20. Plaintiff requested review of the ALJ decision by the Appeals Council. On May 17, 2017 the Appeals Council denied review. At this point the ALJ’s decision became the final decision of the

Commissioner. Plaintiff sought judicial review of the ALJ's decision. Magistrate Judge Burke recommends an affirmation the Commissioner's decision. Plaintiff entered an objection to the Magistrate Judge's Report and Recommendation affirming the denial of Social Security benefits.

II. Standard of Review for a Magistrate Judge's Report and Recommendations

The applicable standard of review of a magistrate judge's report and recommendation depends upon whether objections were made to that report. When objections are made to a report and recommendations of a magistrate judge, the District Court reviews the case *de novo*.

FED. R. CIV. P. 72(b) states:

The district judge must determine *de novo* any part of the magistrate judge's dispositions that has been properly objected to. The district judge may accept, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

III. Overview of Magistrate Judge's Analysis

A reviewing court must affirm the Commissioner's conclusions absent a determination that the Commissioner has (1) failed to apply the correct legal standards or (2) has made findings of fact unsupported by substantial evidence in the record. 42 U.S.C. § 405(g); *Wright v. Massanari*, 321 F.3d 611, 614 (6th Cir. 2003). Magistrate Judge Burke did not err in finding the weight the ALJ ascribed to non-treating physicians Drollinger and Sarris's opinions was appropriate. Plaintiff alleges in her objection that the reports by the non-treating physicians were not evaluated using the relevant applicable factors. However, the record indicates neither a lack of proper evaluation nor clear error. The ALJ's decision "must contain specific reasons for the

weight given to the individual's symptoms, be consistent with and supported by the evidence, and be clearly articulated so the individual and any subsequent reviewer can assess how the adjudicator evaluated the individual's symptoms." 20 C.F.R. § 404.1529(c); SSR 4 2017 WL 5180304. The ALJ was not required to discuss every piece of evidence in his written decision and his findings were both permissible and not in error. *Kornecky v. Comm'r of Soc. Sec.*, Fed. Appx. 496, 507-508 (6th Cir. 2006). The credibility determination was supported by substantial evidence and should be affirmed. Finally, the ALJ's assessment of the evidence in determining Step Five, as well as in finding that the MRI of Plaintiff's back showed only mild to moderate degenerative changes, were not clearly erroneous.

IV. Conclusion

This Court has reviewed the Report and Recommendation *de novo* and, after a thorough consideration of the record, this Court adopts the findings set forth therein. Magistrate Judge Burke, through discerning and comprehensive analysis, correctly concluded that the Commissioner's decision should be affirmed. Accordingly, the Report and Recommendation (ECF #15) is hereby ADOPTED. The Commissioner's final determination denying Plaintiff's application for Disability Insurance Benefits and Supplemental Security Income is AFFIRMED.

This case is hereby TERMINATED.

IT IS SO ORDERED.

DATED: May 31, 2018



DONALD C. NUGENT
United States District Judge